Supreme Court, U.S.
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No. 00-___

In The

Supreme Court of the United States

MATTHEW STEPANSKY,

Petitioner,

v.

STATE OF FLORIDA.

On Petition For A Writ Of Certiorari To The Supreme Court Of Florida

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. May Florida assert jurisdiction over crimes occurring on the high seas, outside its territorial waters and upon foreign vessels, where neither the accused nor victim is a resident of that State?

2. Even if a State may constitutionally maintain such a criminal jurisdiction concurrent with the federal courts, is such a prosecution within the State's police powers when the crime did not cause substantial effects within the State?

LIST OF PARTIES BELOW

The parties to this case below are as reflected in its caption.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Matthew Stepansky, respectfully prays that a writ of certiorari issue to review the April 20, 2000, judgment and opinion of the Supreme Court of Florida in the above-captioned proceeding.

OPINIONS BELOW

The opinion and judgment of the Supreme Court of Florida of April 20, 2000, *Florida v. Stepansky*, No. SC93106 (Fla. Apr. 20, 2000), is currently unreported but can be found at 2000 WL 422872, and is reprinted at App. 2a. The Florida Supreme Court's June 12, 2000, denial of Stepansky's Motion for Rehearing is reprinted at App. 1a.

The March 4, 1998, opinion of the District Court of Appeal of Florida (Fifth District), *Stepansky v. Florida*, No. 97-1761 (Fla. Dist. Ct. App. March 4, 1998), was reported at 707 So.2d 877 (Fla. Dist. Ct. App. 1998). It is reprinted at App. 28a.

STATEMENT OF JURISDICTION

Petitioner seeks review from the opinion and judgment of the Supreme Court of Florida of April 20, 2000. The Florida Supreme Court denied a Motion for Rehearing on June 12, 2000. The U.S. Supreme Court has jurisdiction to review final judgments or decrees rendered by the highest court of a State under 28 U.S.C. § 1257(a).

This Court has certiorari jurisdiction to review a State supreme court's grant or denial of a writ of prohibition. See

Harris v. Washington, 404 U.S. 55, 56 (1971); *Madruga v. Superior Ct. of State of California*, 346 U.S. 556, 557 (1954). Definitive resolutions by State courts of threshold matters in criminal cases (including jurisdictional and double-jeopardy concerns) which are controlled by the federal Constitution and laws are "final judgments" within the meaning of 28 U.S.C. § 1257(a). See *Bullington v. Missouri*, 451 U.S. 430, 437 (1981); see also *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 482-83 (1975).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This Petition questions the power of State courts constitutionally to assert jurisdiction concurrent with that of the federal courts over crimes occurring on the high seas beyond State waters. Florida has made such a claim, pursuant to a 1989 Florida statute creating a "State Special Maritime Criminal Jurisdiction." See Fla. Laws 1989, c. 89-201, § 1. This statute is codified at Fla. Stat. § 910.006 (2000), and is reprinted in its entirety at App. 37a.

This Petition thus implicates a number of provisions in the federal Constitution. First, there is the grant, in Article III, section 2, of exclusive admiralty jurisdiction to the federal courts ("The judicial Power shall extend . . . to all Cases of admiralty and maritime Jurisdiction."). In addition, the issue raised here involves the substantive grant of law-making power to Congress "To define and punish Piracies and Felonies committed on the high Seas. . . ." U.S. CONST. art. I, § 8, cl. 10. Lastly, the assertion of State concurrent jurisdiction over crimes occurring on the high seas runs afoul of the constitutional venue provisions of Art. III, § 2, cl. 3 ("Trial

shall be held in the State where the said Crimes shall have been committed, but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.").

This Petition also involves construction of a number of Acts of Congress which manifestly vest in the federal courts exclusive criminal jurisdiction over offenses occurring on the high seas, thus denying State jurisdiction over crimes occurring beyond their waters. Among these federal statutes with preemptive effect of Florida's law is 18 U.S.C. § 7, establishing the "Special Maritime and Territorial Jurisdiction of the United States," reprinted at App. 42a. Exclusivity of federal criminal jurisdiction for crimes occurring on the high seas is also indicated by 18 U.S.C. § 3231 ("The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States"); reprinted at App. 47a. The Assimilative Crimes Act (ACA), codified at 18 U.S.C. §§ 13(a) & (c), and reprinted App. 45a, likewise suggests such exclusivity. Finally, the venue provision of 18 U.S.C. § 3238 (reprinted at App. 48a), which was enacted pursuant to the Constitution's Venue Clause, leads to the same conclusion.

STATEMENT

This Petition invites the Court to examine the assertion by States of criminal jurisdiction over crimes committed on the high seas beyond their territorial waters (typically 3 nautical miles), even where no traditional indicia of State interests are apparent, and in defiance of established principles of constitutional and international law.

1. a. Until just recently, it was unquestioned that federal courts exercised — consistent with international law — jurisdiction over crimes occurring on the high seas, and that such jurisdiction was exclusive of State courts. The vesting in the federal government both of Congress' power to "define and punish . . . Felonies committed on the high Seas," U.S. CONST. Art. I, § 8, cl. 10, as well as the federal courts' competence over crimes occurring in the traditional admiralty jurisdiction (under the Admiralty Clause in Art. III, § 2, cl. 1), was always regarded as exclusive. In large measure this was attributable to the delicate foreign relations implications of any country's assertion of jurisdiction on the high seas beyond national territory, but criminal prosecutions in such contexts were always seen as especially fraught with danger. See, e.g., *Crosby v. National Foreign Trade Council*, 120 S. Ct. 2288 (2000); *United States v. Locke*, 120 S. Ct. 1135 (2000).

This Court has recognized only one exception to the rule of exclusive federal criminal jurisdiction for offenses on the high seas beyond State waters. In *Skiriotes v. Florida*, 313 U.S. 69 (1941), this Court indicated that States could exercise criminal jurisdiction over offenses beyond their State waters, but only where the State is prosecuting its own citizens. See id. at 76-78.

b. Congress has specifically provided for a comprehensive statutory scheme in fulfillment of its constitutional responsibility to "define and punish . . . Felonies committed on the high Seas." In 1790, Congress enacted a statute to punish murder "upon the high seas or in any river, haven, basin or bay out of the jurisdiction of any particular state." Act of Apr. 30, 1790, c. 9, § 8, 1 Stat. 112, 113 (1790). Thirty-five years later, Congress made clear that it was extending jurisdiction to punish murder on "the high seas . . .

within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular state." Act of March 3, 1825, c. 65, § 4, 4 Stat. 115 (1825). Today, this federal competence is codified as the "special maritime and territorial jurisdiction of the United States," 18 U.S.C. § 7; App. 42a, empowering the federal judiciary to punish offenses occurring on the high seas, or otherwise outside U.S. territory, or in federal enclaves.

In pertinent part, 18 U.S.C. section 7 provides that the federal special maritime jurisdiction includes "[t]he high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State" and "[t]o the extent permitted by international law, any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States." 18 U.S.C. §§ 7(1) & (8); App. 42a, 44a. It is thus clear from these subsections that the federal government may punish offenses occurring on board a non-U.S. registered or flagged vessel, provided that the vessel made a scheduled arrival or departure from a U.S. port and that either the suspect or victim is a U.S. citizen.

Congress has likewise asserted that a variety of substantive offenses are punishable within the special maritime jurisdiction of the United States and are, as a consequence, within the exclusive jurisdiction of the federal courts.[1] However, in an abundance of caution, Congress in the Assimilative Crimes Act (ACA), 18 U.S.C. § 13, allowed for

[1] The two offenses implicated in this case are specifically within that jurisdiction. See 18 U.S.C. §§ 2111 (criminalizing burglary within the federal special maritime jurisdiction), 2241 (aggravated sexual abuse).

the federal judiciary's application of State substantive criminal laws to punish conduct occurring on the high seas (outside of State waters) which was not otherwise criminalized under federal law. See App. 45-46a. Lastly, Congress has prescribed an appropriate venue for the trial of offenses occurring on the high seas beyond State waters. See 18 U.S.C. § 3238; App. 48a.

2. In 1989, Florida legislated its own "State Special Maritime Criminal Jurisdiction." See Fla. Laws 1989, c. 89-201, § 1. This statute is codified at Fla. Stat. § 910.006 (2000); App. 37a. Asserting that Florida "has an interest in ensuring protection of persons traveling to or from Florida by sea," the Act establishes "special maritime jurisdiction extending to acts or omissions on board ships outside of the state. . . ." Id. § 910.006(1)(b) & (e); App. 37a. Somewhat contradictorily, however, the Florida legislature noted that "[t]he interests of the state do not in principle require a general assertion of primary jurisdiction over acts or omissions at sea that would duplicate or conflict with the execution of any law enforcement responsibility of any other jurisdiction." Id. § 910.006(1)(d); App. 37a.

The critical provision of Florida's Special Maritime Criminal Jurisdiction (SMCJ) statute is section 3, which purports to extend Florida criminal jurisdiction "to acts or omissions on board a ship outside of the state" under certain enumerated circumstances. Id. § 910.006(3). Some of these provisions implicate situations where the suspect is a Florida "citizen or resident," see Fla. Stat. § 910.006(3)(a); where the victim is a Florida law enforcement officer or a Florida resident, id. §§ (3)(e) & (f); or where the offense is within a universal jurisdiction under international law or treaties, id. § 3(h). App. 38-39a. Florida has also claimed jurisdiction

where half of the paying passengers on a vessel embarked and disembarked in Florida. Id. § 3(d); App. 38a. This is the supposed basis for jurisdiction in this case.

Florida's SMCJ statute attempted, in rather oblique fashion, to soften its impermissible usurpation of federal law enforcement authority, as well as that exercised by foreign governments ("flag States" or nations of registry of foreign vessels). Section 4 of the Florida Act provides that no criminal penalty will attach unless "the criminal laws of the United States prohibit substantially the same act or omission on board ships of the United States registry outside the territory of the United States." Likewise, "[n]o person shall be tried under this section if that person has been tried in good faith by another state [including a foreign nation or the federal government] for substantially the same act or omission." Fla. Stat. § 910.006(4); App. 39a. The SMCJ statute does not define or clarify what will be regarded as a "substantially . . . same" offense or a double-jeopardy precluding "good faith" trial. Nor have any guidelines been issued pursuant to the Florida Act's requirement that the Florida "Attorney General shall take all measures necessary to ensure that law enforcement officers and prosecutors acting under the authority of this state respect" certain "criteria" in applying the Act, including not "assert[ing] priority over or otherwise interfer[ing] with the exercise of criminal jurisdiction by the United States [or] the flag state," and "in a manner consistent with international law." Id. § 910.006(4)(a); App. 40a.

3. a. The Petitioner, Matthew Stepansky, was charged in Brevard County, Florida with burglary and attempted sexual battery of a teenage girl that occurred on board a cruise ship, the M/V ATLANTIC (also known as "The BIG RED BOAT"). The cruise ship departed from and returned to Port Canaveral,

which is located in Brevard County, Florida. At the time of the alleged incident (the early morning of January 1, 1997), the cruise ship was approximately 100 nautical miles from the Atlantic coastline of Florida. Stepansky and the complainant are both United States citizens, but neither is a Florida resident. The M/V ATLANTIC is registered in Liberia but owned by Premier Cruise Lines, Ltd. of the British West Indies (Cayman Islands). These facts are not in dispute and were assumed by the Florida courts for purposes of ruling on the jurisdictional challenge of Florida's SMCJ. See App. 3a, 29-30a.

Shipboard authorities investigated the alleged crime and interviewed the complaining witness and other eyewitnesses, but not Matthew Stepansky (nor his family, who had accompanied him on the ocean voyage). These authorities concluded that there was no evidence to detain Mr. Stepansky, nor otherwise to commit him to the custody of law enforcement officers. See Fla. Stat. § 910.006(3)(b); App. 38a. The Federal Bureau of Investigation (in cooperation with the Coast Guard) conducted a probe, including examination of witness statements and physical evidence, as well as reviewing results of a polygraph of Mr. Stepansky. The FBI concluded that there was no probable cause to arrest him or have him charged with the relevant federal offenses under 18 U.S.C. §§ 7, 2111 & 2241. Despite the results of the shipboard and federal law enforcement investigations, the Brevard County prosecutor filed an information against Stepansky for burglary and attempted sexual battery under Florida's SMCJ Act.

The prosecutor conceded, and the Florida courts acknowledged, see App. 2-5a, 28-30a, that the sole basis of jurisdiction under the Act was section 910.006(3)(d), which allows for jurisdiction where "[t]he act or omission occurs during a voyage on which over half of the revenue passengers

on board the ship originally embarked and plan to finally disembark in this state, without regard to intermediate stopovers." Id.; App. 38-39a. It is undisputed that all of the elements of the alleged offenses occurred outside of Florida waters, and without the territory of any other jurisdiction. Neither Stepansky nor the complainant is a Florida resident. Shipboard authorities did not request the assistance of Florida law enforcement officials, under section 910.006(3)(b), and the offenses charged are not (like piracy) within a universal jurisdiction under international law, pursuant to 910.006(3)(g). Indeed, Florida prosecutors made no indication that Stepansky's alleged crime "cause[d] or constitute[d] an attempt or conspiracy to cause a substantial effect in" Florida, under section 910.006(3)(g). Thus the only ground for Florida's prosecution of Stepansky was the mere chance that over half of the paying passengers on board the M/V ATLANTIC at the time of the incident had boarded and intended later to disembark in Florida.

b. Stepansky moved to dismiss the information in Brevard County Circuit Court for lack of jurisdiction. On June 11, 1997, this motion was denied by the Circuit Court. Stepansky then sought a writ of prohibition in the Florida District Court of Appeal, contending that Florida had no constitutional authority to assert jurisdiction over him for acts allegedly committed 100 miles off the Florida coast while aboard a foreign flag vessel. A three-judge panel of the Florida Court of Appeal agreed and issued the writ. See App. 33a. That court reasoned that the Florida SMCJ was preempted by the federal special maritime jurisdiction codified in 18 U.S.C. § 7, and was also violative of international law, the treaties of the United States, as well as the federal government's foreign relations prerogatives. See App. 30-33a.

To the extent that Florida was purporting to justify the SMCJ as executing the law-enforcement warrants of foreign flag countries, the Court of Appeal held that such violated the Constitution's express prohibition of States' concluding treaties with foreign nations. See 32-33a. (A concurrence by Harris, J., also indicated that there were further constitutional and international law defects in Florida's SMCJ. See App. 33-36a.)

c. Florida appealed the Court of Appeal judgment, and the Florida Supreme Court reversed. App. 2a. The Florida Supreme Court, after reciting the agreed facts, noted that "neither the United States, any other state, nor the flag state has attempted to prosecute this crime." App. 4a. The Florida Supreme Court also mysteriously observed that the United States "declined our invitation to file an amicus brief in this case." App. 4a n.3.[2]

The Florida Supreme Court then addressed the question whether Florida could, under section 910.006(3)(d), exercise concurrent jurisdiction with the United States over crimes occurring on the high seas, beyond State waters and on foreign vessels, and not otherwise involving Florida residents. That court began with the premise that authority for law enforcement has been constitutionally allocated to the States. Then rather curiously relying on this Court's recent decision in *United States v. Locke*, 120 S. Ct. 1135 (2000) (which held that Washington's oil tanker operation regulations were preempted by federal law), the Florida Supreme Court held

[2] This Court may wish to invite the Solicitor General to file a brief expressing the views of the United States in this matter.

that the Tenth Amendment and this Court's decision in *Skiriotes v. Florida*, 313 U.S. 69 (1941), sanctioned Florida's assertion of jurisdiction under the SMCJ, unless vitiated by a contrary provision of the federal constitution. See App. 6-7a, 15a.

The Florida Supreme Court went on to rule that neither the Define and Punish Clause of Article I of the Constitution, the Treaty Power under Article II, nor the grant of admiralty jurisdiction under Article III, was a specific enough bar on Florida's assertion of criminal jurisdiction over non-residents committing crimes outside Florida waters and on foreign flag ships. The Florida Supreme Court held that States have concurrent jurisdiction over offenses that Congress had defined and punished, see App. 8a, and that Stepansky had no standing to raise any violation of the relevant law of the sea treaties. See App. 8-12a. The Florida Supreme Court concluded that the Admiralty Clause was not offended by Florida's assertion of jurisdiction in what would otherwise be the exclusive domain of the admiralty. See App. 12-15a.

Having held that States may, upon their own legislative initiative, assert criminal jurisdiction offshore concurrent with the United States, the Florida Supreme Court went on to rule that prosecuting Stepansky was within Florida's police power because Stepansky's alleged acts, while occurring a hundred miles offshore, had "effects" in Florida. See App. 15a-17a. The crux of the court's ruling was its agreement with the assertion that:

> if the federal government and the foreign government under whose flag the cruise ship sails fail to prosecute crimes on cruise ships, Florida's tourism industry will suffer a significant adverse effect.

. . . .

> . . . . Florida's tourism industry could be significantly affected if crimes that occur on board cruise ships where a majority of the fare-paying passengers embark and disembark in Florida were to go unprosecuted. We emphasize that pursuant to this statute the State exercises limited jurisdiction by operating only where the crime has not been prosecuted by any other government entity, including the federal government or the foreign country in which the ship is registered.

App. 19-20a.

The majority opinion of the Florida Supreme Court drew a sharp dissent from two Justices. See App. 21. Justice Wells, joined by Harding, C.J., emphasized that the majority's indispensable first premise of permissive State jurisdiction offshore, consistent with some Tenth Amendment principles, was manifestly in error. See App. 21a. The dissent observed that both the Define and Punish Clause and Admiralty Clause supported exclusive federal jurisdiction for crimes on the high seas, and that Congress had enacted such a scheme under the federal special maritime jurisdiction in 18 U.S.C. § 7. See App. 21-24a, 27a. The dissent also criticized the majority's use of an "effects doctrine" analysis based solely on the observation that "the alleged crime potentially causes harm to Florida's tourist industry." App. 24a.

d. The Florida Supreme Court denied Stepansky's Motion for Rehearing on June 12, 2000. App. 1a. This timely Petition follows. A writ of prohibition having earlier been granted, no further proceedings have occurred in this prosecution. Mr. Stepansky is not in custody.

REASONS FOR GRANTING THE PETITION

STATE ARROGATIONS OF CRIMINAL JURISDICTION ON THE HIGH SEAS ARE INCREASING IN SCOPE AND MERIT THIS COURT'S ATTENTION

This Petition calls upon the Court to settle the proper allocation of prosecutorial authority between the State and national governments. At issue here is whether States of the Union may assert jurisdiction to punish offenses occurring outside their territory on the high seas (and not otherwise involving State residents), concurrent with that power traditionally – and exclusively – exercised by the federal government pursuant to the Constitution and Acts of Congress.

A. Florida's Special Maritime Criminal Jurisdiction Statute is Part of a Broader Pattern of Coastal State Assertions of Criminal Jurisdiction and Regulatory Authority on the High Seas.

1. Petitioner acknowledges that Florida is the only State that has legislated its own special maritime criminal jurisdiction (SMCJ). Nevertheless, this enactment is emblematic of recent, aggressive State assertions of criminal jurisdiction on the high seas.[3] For example, California and

[3] For purposes of this Petition, the waters situated beyond a State's territorial waters (typically 3 nautical miles from shore, but for the Texas and the Gulf Coast of Florida, 9 nautical miles) will be referred to as the

(continued...)

Maine have extended their criminal jurisdictions for some conservation purposes. See Calif. Fish & Game Code § 2582(a)(4); Me. Rev. Stat. Ann. tit. 1, §§ 2(2) & 2(2-A). In addition, Washington's BAP tanker operation regulations, which were at issue in this Court's recent ruling in *Locke v. United States*, 120 S. Ct. 1135 (2000), were enforced through an adjunct criminal scheme. See id. at 1142.

Although no State has attempted to extend its jurisdiction as broadly as Florida does here, several States have recently taken similar, if less ambitious, tacks, thus creating a trend of States' unilaterally enlarging their respective jurisdictions. See *People v. Weeren*, 607 P.2d 1279 (Cal. 1980); *People v. Corsino*, 397 N.Y.S.2d 342 (Crim. Ct. 1977); *State v. Bundrant*, 546 P.2d 530 (Alaska 1976).

2. This trend must be seen in the context of the constitutional limits this Court has placed on State extraterritorial criminal jurisdiction on the high seas. The leading case in this area of law remains *Skiriotes v. Florida*, 313 U.S. 69 (1941). In *Skiriotes*, this Court permitted Florida to prosecute one of its citizens for using diving equipment to take sponges from waters outside the territory of Florida. The linchpin of that case was that a sovereign has the authority to govern *its own citizens*, regardless of whether the act took place outside the territory of that sovereign. See id. at 76-78.

Subsequent State cases have expanded the scope of the term "citizen" to include mere residency. See *Alaska v. Sieminski*, 556 P.2d 929, 933-34 (Alaska 1976). Other State courts have claimed jurisdiction when the non-citizen defendant

[3](...continued)
"high seas." In the Great Lakes, State territorial waters extend to the median line of a boundary with a sister State or with Canada.

had sufficiently close contacts with the State (such as applying for and receiving fishing licenses from the State or repeatedly using the territorial waters and shore-based facilities of that State), and the activity had potentially harmful effects upon the resources in the territorial waters (like marine wildlife). See *State v. Bundrant*, 546 P.2d 530, 554-56 (Alaska 1976). The Florida Supreme Court relied on these precedents for its anomalous holding, see App. 17a, that a State may prosecute a *non-resident* who has the scantiest of contacts to that State for offenses occurring on the high seas.

Even if Petitioner were to concede here that these expanded definitions of "citizen" are appropriate, the Florida Supreme Court's reliance on *Skiriotes* remains misplaced. Stepansky was neither a citizen nor resident of Florida, and his sole contact with Florida was his once using the State as a departure point for the pleasure cruise at issue here. These are not substantial contacts, especially since his alleged acts are irrelevant to the State's regulatory interests in such matters as wildlife conservation, occupational safety or pollution prevention offshore.

Regardless of which interpretation of "citizen" prevails, *Skiriotes* marks the largest concession of extraterritorial criminal jurisdiction to the States that this Court has explicitly approved, and section 910.006 clearly exceeds that limit. The Florida Supreme Court's holding in *Stepansky* is contrary to *Skiriotes* and for that reason alone should be reviewed and reversed by this Court. See *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 146-47 (1999) (confusion regarding proper application of this Court's precedents is sufficient ground for grant of review). But additional constitutional considerations warrant review and reversal.

3. The U.S. Constitution provides that Congress shall

have the power "To define and punish . . . Felonies committed on the high Seas." U.S. CONST. art. I, § 8, cl. 10. Congress later created the "special maritime and territorial jurisdiction of the United States," now codified as 18 U.S.C. § 7, which gives the federal judiciary the power in certain circumstances to hear cases originating outside U.S. territory or in federal enclaves. See *supra*, at 4-5.

It is clear from these provisions that the federal government may claim jurisdiction over Stepansky. The issue here, however, is whether Florida may also prosecute him. As evidence that it can do so, the Florida Supreme Court relied (see App. 13a) on a single federal statutory provision that

> The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.
>
> Nothing in [Title 18 of the U.S.C.] shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

18 U.S.C. § 3231.

The Florida Supreme Court acknowledged that because Stepansky's alleged acts violate federal laws (18 U.S.C. §§ 2111 & 2241), a U.S. district court would have jurisdiction over this case. However, that court held that the second sentence of section 3231 gives Florida the power to extend its criminal jurisdiction over Stepansky. See App. 13a. Since section 3231 is clearly not an affirmative grant of jurisdiction to the States, the question then is whether the States have ever had the power to exercise such extraterritorial criminal jurisdiction that would be retained or saved by the language of section 3231's second sentence.

The Florida Supreme Court's holding directly conflicts with those precedents ruling in favor of exclusive federal criminal jurisdiction over offenses occurring on the high seas. In *United States v. Press Publishing Co.*, 219 U.S. 1 (1911), this Court cited a bill drafted by Justice Story, which served as the basis for the 1825 act of Congress that created the language now found in the second sentence of 18 U.S.C. § 3231. This Court observed that Justice Story wrote plainly that the "state courts have no jurisdiction of crimes committed on the high seas." Id. at 12 (quoting 1 LIFE OF JUSTICE STORY 293 (1851)). Thus, the meaning that the Florida Supreme Court would give the language in question runs completely contrary to the sentiments of one of the primary architects of the bill in which the language appeared. Likewise, in *United States v. Bowman*, a federal district court stated that "the high seas are a part peculiarly within the jurisdiction of the United States in the application of its criminal laws, as distinguished from the states and their laws," 287 F. 588, 592 (S.D.N.Y. 1921), and this holding was not disturbed by this Court on appeal. 260 U.S. 94 (1922).

The U.S. Court of Appeals for the Second Circuit has recently spoken of "waters subject only to federal jurisdiction, i.e., 'the high seas beyond a marine league'" in *In re Air Crash off Long Island*, 209 F.3d 200, 216 (2d Cir. 2000). Even more emphatically, that court observed that federal courts exercise "'supreme and exclusive' jurisdiction" over crimes "'on the high seas'." *United States v. Gatlin*, 216 F.3d 207, 216, 219 (2d Cir. 2000) (quoting 42 Cong. Rec. 586 (1908) (statement of Rep. Moon)). The Fifth Circuit has referred to "the exclusive federal power . . . over foreign trade and the high seas" in *United States v. Perez-Herrera*, 610 F.2d 289, 292 (5th Cir. 1980). Again Justice Story, writing for the federal Circuit Court for the District of Massachusetts, wrote that "crimes and offences within the admiralty jurisdiction are not only

cognizable, but cognizable exclusively under the authority of the United States." *United States v. Coolidge*, 25 F. Cas. 619, 621 (D. Mass. 1813) (No. 14,857), rev'd on other grounds, 14 U.S. (1 Wheat.) 415 (1816). See also *United States v. Robertson*, 638 F. Supp. 1202, 1214 (E.D. Va. 1986); *United States v. Grush*, 26 F. Cas. 48, 51 (D. Mass. 1829).

Several State courts and administrative tribunals have recognized these limits to their own jurisdictions. See *City of Lake Oswego v. $23,232.23 in Cash*, 916 P.2d 865, 880 (Or. 1996) ("those crimes were . . . committed on the high seas, and thus were within the federal government's exclusive admiralty jurisdiction"); see also *Carter v. State*, 420 So. 2d 292, 297 (Ala. Crim. App. 1982) ("the federal government has exclusive jurisdiction over the offense because it was committed within the special maritime jurisdiction . . . of the United States"); *State v. Hallock*, 44 A.2d 326, 327 (Vt. 1945) (recognizing that exclusive federal criminal jurisdiction on the high seas does not apply to State's internal waters); La. Att'y Gen Op. No. 81-386, 1981 WL 155394 (1981) (federal courts have "exclusive jurisdiction" over offenses committed at the Louisiana Offshore Oil Port (LOOP), located 18 miles offshore).

However, there appears to be confusion in some State courts on this point, and, for just one example, one might look to the New York judiciary. One New York court claimed jurisdiction over a non-citizen who committed an assault over the high seas on an airplane that landed in New York. *People v. Corsino*, 397 N.Y.S.2d 342 (Crim. Ct. 1977). Another court subsequently refused jurisdiction over a non-citizen who, while on-board, attempted to blow up an airplane, which was over the high seas at that time but later landed in New York. *People v. Costa*, 469 N.Y.S.2d 545 (Sup. Ct. 1983).

In sum, crimes on the high seas have been

overwhelmingly recognized as subject to federal, and not State, prosecution — with the sole caveat articulated in *Skiriotes* that a State has jurisdiction over its "citizens." The Florida Supreme Court's decision below, upholding extensions of jurisdiction under the State's SMCJ with regard to non-Florida residents, thus reflects a radical departure from this Court's ruling in *Skiriotes*. See also *Keen v. Florida*, 504 So. 2d 396, 399 (Fla. 1987) (likewise ruling that "concurrent jurisdiction exists between a state and the federal government where the offense [on the high seas] violates both sovereigns' laws."). It also appears to be against the great weight of precedent from this Court, the lower federal courts, and State courts — all of which have recognized that the United States has exclusive jurisdiction over offenses on the high seas. Florida's SMCJ seems to be the latest, and most extreme, incursion by States to prescribe legislatively a concurrent criminal jurisdiction on the high seas.

B. The Constitution and Acts of Congress Indicate Exclusive Federal Criminal Jurisdiction on the High Seas.

The evidence above of exclusive federal criminal jurisdiction on the high seas notwithstanding, Florida will likely contend that the federal structure of the U.S. Constitution and the Tenth Amendment provide for the State's concurrent criminal jurisdiction. The Florida Supreme Court made this very holding but misconstrued the impact that *United States v. Locke* bears on this issue. 120 S. Ct. 1135 (2000). *Locke* stands for the proposition that while generally there is an assumption against federal preemption, "an 'assumption' of nonpre-emption is *not* triggered when the State regulates in an area where there has been a history of significant federal presence." Id. at 1147

(emphasis added). This Court also determined that with "national and international maritime commerce, . . . there is no beginning assumption that concurrent regulation by the State is a valid exercise of its police powers." Id. at 1148.

As the above analysis illustrates, extraterritorial criminal jurisdiction has remained nearly an exclusively federal prerogative throughout the history of the Republic. That *Locke* was a civil case only augments this submission. The argument for federal preemption is even stronger for the present case, because criminal enforcement of State regulations or offenses may have an even bigger impact on maritime commerce. This was even acknowledged by this Court to the extent that Washington's tanker regulations at issue in *Locke* were enforced by civil penalties. See id. at 1142. Thus, section 18 U.S.C. § 7 may fairly be regarded as preempting Fla. Stat. § 910.006.

Moreover, various clauses of the U.S. Constitution — the Admiralty and Venue Clauses of Article III, as well as the Define and Punish Clause of Article I — militate toward federal exclusivity of prosecution over high seas crimes.

1. The Admiralty Clause of Article III provides that "The judicial Power shall extend . . . to all Cases of admiralty and maritime jurisdiction." U.S. CONST. art. III, § 2, cl. 1. The Florida Supreme Court correctly noted that this clause does not confer exclusive federal jurisdiction of each and every admiralty or maritime case. However, there is historical evidence that the reason for this non-exclusivity is that the drafters of the Constitution considered some civil maritime disputes to be matters for the State courts, but sought with this clause "to ensure [exclusive] federal jurisdiction over prize, *criminal*, and revenue cases." *American Dredging Co. v. Miller*, 510 U.S. 443, 461 (1994) (Souter, J., concurring) (citing Casto, *The Origins of Federal Admiralty Jurisdiction in an Age of*

Privateers, Smugglers, and Pirates, 37 AM. J. LEGAL HIST. 117, 154 (1993)) (emphasis added). The original intent of the Admiralty Clause was to vest in the federal courts exclusive criminal jurisdiction on the high seas.

Furthermore, the Florida Supreme Court, in dismissing the Admiralty Clause as an obstacle to State jurisdiction, could only cite cases where at least part of the events took place in State territorial waters or where the defendant was a citizen of that State. See App. 12a (citing *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325, 341 (1973) (territorial waters); *Pacific Merchant Shipping Ass'n v. Aubry*, 918 F.2d 1409 (9th Cir. 1990) (residence); *Hoopengarner v. United States*, 270 F.2d 465, 471 (6th Cir. 1959) (territorial waters); *Keen v. State*, 504 So.2d 396, 398-99 (Fla. 1987) (citizenship)). Again, the alleged crime in the present case happened wholly outside the territory of Florida, and Stepansky was not a citizen of Florida.

2. Next, the Constitution requires that "The Trial of all Crimes . . . shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed." U.S. CONST. art. III, § 2, cl. 3. Pursuant to this clause, the First Congress enacted what is now codified as 18 U.S.C. § 3238, which reads in pertinent part: "The trial of *all offenses* begun or committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district in which the offender is arrested." Id. (emphasis added). By "district," Congress meant a judicial district created by an act of Congress, that is, a federal district. See *United States v. Newth*, 149 F. 302, 302 (W.D. Wash. 1906). The Venue Clause, read in *pari materia* with the First Congress' venue statute, reveal that the Framers intended to reserve to the federal government exclusive power to punish crimes committed on the high seas.

3. The Define and Punish Clause, which again provides that "Congress shall have Power . . . To define and punish . . . Felonies committed on the high Seas," is the third constitutional provision bearing on exclusive federal jurisdiction in this case. U.S. CONST. art. I, § 8, cl. 10. At least one of the early commentators on U.S. constitutional law asserted that the powers given in the Define and Punish Clause are exclusively Congress'. See William Rawle, A VIEW OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA 106-9 (Philip H. Nicklin 2d ed. 1829) ("The regulation of foreign commerce appertains to congress alone, and the punishment of offences committed on the high seas is an unavoidable incident to this power: as soon as the Constitution was adopted, the power of the states in this respect was at an end.").

The Florida Supreme Court dismissed this argument, concluding that since States could punish counterfeiting — a power given Congress by another clause in article I, section 8 (see *United States v. Arjona*, 120 U.S. 479 (1887)) — States could do likewise with felonies upon the high seas. This analogy is misconceived because the counterfeiting at issue in cases like *Arjona* occurred within the territory of that prosecuting State, which is the foundation of a State's jurisdiction. That power of a State is a far cry from asserting extraterritorial criminal jurisdiction over crimes committed by a non-citizen against a non-citizen.

And lastly, the Assimilative Crimes Act (ACA), 18 U.S.C. § 13, App. 45a, provides in pertinent part that if a person, in one of those places defined by 18 U.S.C. § 7, commits a crime that would be an offense in the nearest State if the event happened within that State's territory, but Congress has failed to criminalize that behavior, then the federal courts may try that person for the State crime. This statute only has effect if the State's jurisdiction ends at its territorial boundary

(three nautical miles from shore) and federal jurisdiction outside that mark is exclusive. See *United States v. Chaussee*, 536 F.2d 637, 643 (7th Cir. 1976).

The Florida Supreme Court's ruling in *Stepansky* would render 18 U.S.C. § 13 nugatory in the offshore context. If the Florida Supreme Court is correct and States can unilaterally extend concurrent jurisdiction over all crimes occurring offshore, then Congress would have had no need to allow the federal assimilation of State crimes in that area. Congress realized that it is precisely because States have no concurrent criminal jurisdiction beyond their territorial waters that the ACA was enacted.

4. Florida's assertion of criminal jurisdiction beyond its territorial waters thus flies in the face of (1) the Constitution's grant of exclusive admiralty jurisdiction over crimes occurring offshore; (2) the specific venue provisions of the Constitution; (3) the power of Congress to define and punish offenses on the high seas; and (4) the clear import of the Assimilative Crimes Act. For these reasons, Florida Statute 910.006(3)(d) is clearly in excess of State authority under the Constitution. And while Petitioner is mindful that this Court does not sit to correct errors, Florida's SMCJ — as now repeatedly vindicated by the highest court of that jurisdiction — represents a direct challenge to federal constitutional prerogatives. No point would be served in allowing further percolation of this issue.

C. Florida's Assertion of Jurisdiction Based on the "Effects Doctrine" Is Constitutionally Impermissible.

If this Court were to agree with Petitioner's submission

that States may not exercise criminal jurisdiction on the high seas over non-citizens, that would end this matter. But even if the Court were to conclude that concurrent criminal jurisdiction were possible, the holding of the Florida Supreme Court would still be flawed because that court misapplied the effects doctrine. Prosecuting a non-resident for crimes occurring outside a State's territorial jurisdiction, where a defendant had only tangential contacts with the forum State, cannot be justified under due process strictures because of a supposed need to protect the forum State's tourism industry. This cannot seriously be regarded as a substantial, direct and non-speculative interference with a legitimate interest of a State, giving rise to a constitutionally permissible assertion of what would otherwise be extraterritorial criminal jurisdiction. See RESTATEMENT (THIRD) FOREIGN RELATIONS LAW OF THE UNITED STATES § 402, rptr's note 5 (1987) ("A State [of the Union] may not apply its laws to a person outside its territory merely on the basis that he is a national of the United States, but it may apply at least some of its laws to a person outside its territory on the basis that he is a citizen, resident, or domicilliary of the State.").

The leading case law on this doctrine requires that a State show not only that the acts of the defendant cause harm within the forum jurisdiction, but also that the defendant intended that his acts cause harm within the State. See *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 796 (1993); *Strassheim v. Daily*, 221 U.S. 280, 285 (1911); ULA Model Penal Code § 1.03(1)(f) ("[A] person may be convicted under the law of this State . . . if . . . the offense is based on a statute of this State which expressly prohibits conduct outside the State, when the conduct bears a reasonable relation to a legitimate interest of this State and the actor knows or should know that his conduct is likely to affect that interest."). Even if Florida could prove that Stepansky committed these alleged crimes, it would

be hard-pressed indeed to demonstrate that Stepansky intended to ruin Florida's tourism industry thereby.

Indeed, Florida's use of the effects doctrine smacks of the same faulty logic that has been excoriated by this Court concerning Congressional assertions of power under the Commerce Clause. This Court has criticized contentions that the federal government can criminalize particular violent acts against women or carrying a gun in proximity to a school, solely on account of a potential causality of aggregate effects on the national economy. See *Lopez v. United States*, 514 U.S. 549, 567 (1995); *United States v. Morrison*, 120 S. Ct. 1740, 1752 & n.6 (2000). Likewise, the suggestion that Florida may prosecute Stepansky because "Florida's tourism industry could be significantly affected if crimes that occur on board cruise ships . . . were to go unprosecuted," App. 25a, is constitutionally infirm.

If left unreviewed, Florida's assertion of concurrent criminal jurisdiction on the high seas — when combined with this expansive and indefensible formulation of the effects doctrine — will give States license to prosecute offenses in a variety of offshore contexts. The logical consequence to this trend is that other States will follow suit, unilaterally throwing their jurisdictional nets farther and farther offshore. This is certainly more likely to cause friction with federal law enforcement on the high seas (despite the Florida legislature's protestations to the contrary, Fla. Stat. §§ 910.006(1)(c) & (d); 910.006(5)(a)(1) & (2); App. 39-40a). Florida's usurpation of power to punish high seas conduct that the federal government might regard as non-criminal, or, in a particular instance, not care to pursue because of delicate foreign relations concerns, is in direct conflict with this Court's precedents on the "plentitude" of federal Executive authority in this sphere. See *Crosby v. National Foreign Trade Council*, 120 S. Ct. 2288,

2295-301 (2000); *Zschernig v. Miller*, 389 U.S. 429, 433-36 (1968).

If a State can subject a non-citizen outside its territory to its criminal jurisdiction, there would be nothing to keep States from tackling offshore oil rigs and fishing activities, communications industries and construction operations. Instead of complying with the one set of regulations promulgated by the federal government, these industries could face multiple and inconsistent obligations, as each State seeks to have its administrative and penal presence felt. What Florida attempts by enacting its own special maritime criminal jurisdiction is unconstitutional, infeasible, and against the great weight of case law. It also presents a potent threat to uniform and coherent regulation offshore, federal foreign relations prerogatives, and the authority of the federal courts sitting in admiralty. Petitioner trusts that this Court, in its wise exercise of discretion, will grant review and resolve this matter of serious constitutional moment.

CONCLUSION

For the foregoing reasons, this Petition ought to be GRANTED.

Respectfully submitted,

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[4] Counsel for Petitioner acknowledges the assistance of Ian Popick, Emory Law '02.

Appendix

Supreme Court of Florida

Monday, June 12, 2000

Case No.: SC93106
Lower Tribunal No.: 5D97-1761

STATE OF FLORIDA v. **MATTHEW STEPANSKY**
Appellant Appellee

Appellee's Motion for Rehearing is hereby denied.

SHAW, ANSTEAD, PARIENTE, LEWIS and QUINCE, JJ., concur
HARDING, C.J., and WELLS, J., dissent

A True Copy
Test:

Thomas D. Hall
Clerk, Supreme Court /seal/

STATE of Florida, Appellant,
v.
Matthew STEPANSKY, Appellee.

No. SC93106.

Supreme Court of Florida.

April 20, 2000.

An Appeal from the District Court of Appeal--Statutory or Constitutional Invalidity Fifth District--Case No. 5D97-1761

Robert A. Butterworth, Attorney General, and Richard L. Polin, Assistant Attorney General, Miami, Florida, for Appellant.

Robin C. Lemonidis and Bob R. Cherry of O'Brien, Riemenschneider, Kancilia & Lemonidis, P.A., Melbourne, Florida, for Appellee.

PARIENTE, J.

We have on appeal Stepansky v. State, 707 So.2d 877 (Fla. 5th DCA 1998), a decision of the Fifth District Court of Appeal declaring section 910.006(3)(d),[1] Florida Statutes

[1] Section 910.006(3), Florida Statutes (1995), provides in relevant (continued...)

(1995), to be unconstitutional as an intrusion "upon the exclusive province of [the United States] Congress and the President as delineated by Article I, section 10 of the United States Constitution." Stepansky, 707 So.2d at 879. We have jurisdiction. See art. V, § 3(b)(1), Fla. Const. For the reasons expressed in this opinion, we reverse the decision of the Fifth District and find that section 910.006(3)(d), which is part of Florida's "special maritime criminal jurisdiction" statute, is constitutional as applied in this case.

FACTS

Matthew Stepansky, a United States citizen, was charged in Brevard County, Florida with burglary and attempted sexual battery of a thirteen-year-old American citizen that allegedly occurred on board a cruise ship, the M/V Atlantic. The cruise ship departed from and returned to Port Canaveral, which is located in Brevard County. At the time of the alleged crime, the cruise ship was approximately 100 nautical miles[2] from the

[1](...continued)

part:

> The special maritime criminal jurisdiction of the state extends to acts or omissions on board a ship outside of the state under any of the following circumstances:
>
> ....
>
> > (d) The act or omission occurs during a voyage on which over half of the revenue passengers on board the ship originally embarked and plan to finally disembark in this state, without regard to intermediate stopovers.

[2] The term "nautical mile" is often used interchangeably with the

(continued...)

Atlantic coastline of Florida. Stepansky and the complainant are both United States citizens but neither one is a Florida resident. The M/V Atlantic is registered in Liberia but owned by Premier Cruise Lines, Ltd. of the British West Indies. Neither the federal government,[3] any other state, nor the flag state[4] has attempted to prosecute this crime.

Stepansky moved to dismiss the charge on the grounds that the State lacked jurisdiction because the crime occurred outside the territorial jurisdiction of Florida and because the prosecution was precluded by the Supremacy Clause of the United States Constitution. In response, the State argued that Florida state courts have jurisdiction over this crime under section 910.006(3)(d) because the majority of the paying passengers on the cruise ship had embarked and intended to disembark in Florida. The trial court denied the motion, and Stepansky sought a writ of prohibition from the Fifth District. The Fifth District issued the writ, holding that the Florida Legislature was without constitutional authority to enact section 910.006(3)(d) because the statute intruded upon the exclusive

[2](...continued)
term "geographic mile," although a geographic mile is actually slightly longer than a nautical mile. See Op. Att'y Gen. Fla. 95-51 n. 14 (1995) (explaining that a " 'geographic' mile is the length of one minute of the arc of the equator, or 6,087.08 feet," a " 'nautical' mile is 6,076.11549 feet," and a " 'statute' or 'English' mile (used on land) is 5,280 feet").

[3] The United States has also declined our invitation to file an amicus brief in this case.

[4] Section 910.006(2)(a) defines the "flag state" as the state under whose laws the ship is registered.

province of Congress and the President under the United States Constitution, specifically Article I, Section 10. See Stepansky, 707 So.2d at 879.

ANALYSIS

Section 910.006(3)(d) of the special maritime criminal jurisdiction statute that is the subject of the constitutional attack in this case extends the ability of this State to prosecute crimes to criminal acts committed on cruise ships sailing outside the State's territorial waters[5] if the "act or omission occurs during a voyage on which over half of the revenue passengers on board the ship originally embarked and plan to finally disembark" in Florida. § 910.006(3)(d).[6] In determining whether section 910.006(3)(d) is constitutional, we must "resolve all doubts as to the validity of [the] statute in favor of its constitutionality, provided the statute may be given a fair construction consistent with the federal and state constitutions as well as with the legislative intent." State v. Stalder, 630 So.2d 1072, 1076 (Fla.1994) (quoting State v. Elder, 382 So.2d 687, 690

[5] Florida's boundary extends "along the edge of the Gulf Stream or along a line three geographic miles from the Atlantic coastline ... whichever is greater" and three leagues from the Gulf of Mexico coastline. Art. II, § 1(a), Fla. Const.

[6] Other sections of this statute extend the jurisdiction of this State to prosecute criminal acts committed on cruise ships in other circumstances, including where "[t]he victim is a Florida law enforcement officer on board the ship in connection with his or her official duties," § 910.006(3)(e), "[t]he act or omission is one of violence ... generally recognized as criminal, and the victim is a resident of this state," § 910.006(3)(f), or the "act or omission causes or constitutes an attempt or conspiracy to cause a substantial effect in this state that is an element of the offense charged." § 910.006(3)(g).

(Fla.1980)) (alteration in original).

A. Principles of Federalism

The Tenth Amendment to the United States Constitution specifically provides that all "powers not delegated to the United States by the Constitution" are reserved to the states. Indeed, "[i]t is fundamental in our federal structure that states have vast residual powers. Those powers, unless constrained or displaced by the existence of federal authority or by proper federal enactments, are often exercised in concurrence with those of the national government." United States v. Locke, --- U.S. ----, ----, 120 S.Ct. 1135, 1148, --- L.Ed.2d ----, ---- (2000) (citing McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 4 L.Ed. 579 (1819)).

The United States Supreme Court has observed that "the States under our federal system have the principal responsibility for defining and prosecuting crimes." Abbate v. United States, 359 U.S. 187, 195, 79 S.Ct. 666, 3 L.Ed.2d 729 (1959); see United States v. Lopez, 514 U.S. 549, 561 n. 3, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995). Nonetheless, if federal law has preempted state law, either expressly or impliedly, the Supremacy Clause[7] requires state law to yield. See, e.g., Barnett

[7] The Supremacy Clause, found in article VI, clause 2 of the United States Constitution, provides that:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the

(continued...)

Bank of Marion County, N.A. v. Nelson, 517 U.S. 25, 30, 116 S.Ct. 1103, 134 L.Ed.2d 237 (1996); Ray v. Atlantic Richfield Co., 435 U.S. 151, 157, 98 S.Ct. 988, 55 L.Ed.2d 179 (1978).

Thus, in Skiriotes v. Florida, 313 U.S. 69, 61 S.Ct. 924, 85 L.Ed. 1193 (1941), the United States Supreme Court concluded that Florida could prosecute one of its citizens for violating state laws regulating the taking of commercial sponges, even if the crime occurred outside of Florida's territorial waters. Id. In determining that the State's exercise of extraterritorial jurisdiction was proper, the Court examined whether any conflict with federal law existed. See id. at 74-75. Because there was no conflict with federal law and the State had an interest in the proper maintenance of its sponge fishery, the Court found that the State continued to exercise its traditional police powers. See id.

With this constitutional framework in mind, we examine whether section 910.006(3)(d) conflicts with federal law and whether the prosecution is within the State's police powers. First, we examine whether the State's exercise of jurisdiction in this case conflicts with any provisions in the United States Constitution, specifically the provision granting Congress the right to define piracies and felonies on the high seas, see U.S. Const., art. I, § 8, cl. 10, the provision granting the federal government the power to enter treaties, see U.S. Const., art. I, § 10, cl. 1, and the provision granting the federal courts the power to hear admiralty and maritime cases, see U.S. Const., art III, § 2, cl. 1.

[7](...continued)
Contrary notwithstanding.

1. Power to Define Piracies and Felonies

The Constitution's grant of power to Congress to "define and punish Piracies and Felonies committed on high Seas," U.S. Const, art. I, § 8, cl. 10, does not preclude states from punishing an act that also violates the state's laws. The same act or omission can offend the laws of both the state and federal government. See Abbate, 359 U.S. at 194 ("[A]n act denounced as a crime by both national and state sovereignties is an offense against the peace and dignity of both and may be punished by each.") (quoting United States v. Lanza, 260 U.S. 377, 382, 43 S.Ct. 141, 67 L.Ed. 314 (1922)). For example, although the United States Constitution grants Congress the power to "define and punish ... offenses against the Law of Nations," U.S. Const., art. I, § 8, cl. 10, both Congress and the states can prosecute a criminal for counterfeiting foreign currency. See United States v. Arjona, 120 U.S. 479, 487, 7 S.Ct. 628, 30 L.Ed. 728 (1887). Therefore, the same felony on the high seas can violate the laws of both the United States and a state, and be subject to prosecution by both the state and the federal government. Accordingly, this constitutional provision is not implicated.

2. Treaty Clause

We next turn to the constitutional provision relied on by the Fifth District, Article I, Section 10, Clause 1, of the United States Constitution,[8] which prohibits states from entering

[8] "No State shall enter into any Treaty, Alliance, or Confederation...." U.S. Const., art. I, § 10, cl. 1. The United States Constitution grants the President the power "with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present

(continued...)

treaties. See Stepansky, 707 So.2d at 879. According to the Fifth District, the State is unable to prosecute this crime because Florida is constitutionally prohibited from entering into a treaty with the flag state, Liberia. See id.

Stepansky asserts this prosecution is prevented by the flag-state rule set forth in the Geneva Convention on the High Seas, Apr. 29, 1958, art. VI, 13 U.S.T. 2313, 2315, 450 U.N.T.S. 82, 86.[9] However, as Stepansky conceded during oral argument, criminal defendants lack standing to raise a violation of an international treaty that is not self-executing.[10] See Skiriotes, 313 U.S. at 76; United States v. Roberts, 1 F.Supp.2d 601, 606 (E.D.La.1998). Article 6 of the Geneva Convention on the High Seas is not a self-executing treaty and does not operate to limit the jurisdiction traditionally asserted by the United States over foreign vessels on the high seas. See United States v. Postal, 589 F.2d 862, 884 (5th Cir.1979); see also Roberts 1 F.Supp.2d at 606. Therefore, the question of whether section

[8](...continued)
concur." U.S. Const., art. II, § 2, cl. 2.

[9] Article 6 of the Geneva Convention on the High Seas sets forth the flag-state rule that "[s]hips shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas."

[10] "The term 'self-executing' should be reserved for 'international agreements that are meant, and are specific enough to be able, to establish rights and duties of individuals directly enforceable in domestic courts." United States v. Roberts, 1 F.Supp.2d 601, 606 n. 2 (E.D.La.1998) (quoting Stefan A. Riesenfield, Restatement: International Agreements, 14 Yale J. Int'l L. 455, 463 (1989)).

910.006(3)(d) is in violation of this treaty is not properly before this Court.

Further, on the merits, the exercise of jurisdiction in this case is not an attempt by the State to enter a treaty. In Skiriotes, the United States Supreme Court rejected the defendant's argument that the State was preempted from exercising extraterritorial jurisdiction because it would encroach upon the exclusive treaty-making power of the United States. 313 U.S. at 71-72. Instead, the Court reasoned that because the United States would have been able to exercise jurisdiction, the question of whether the State could also exercise jurisdiction was one of federal rather than international law. See id. at 75-77.

International law is not concerned with the question of whether this defendant is prosecuted by a state or the federal government.[11] As a comment to the Restatement (Third) of Foreign Relations (1986) [hereinafter Restatement], explains:

> Since international and other foreign relations law are the law of the United States, under the Supremacy Clause of the Constitution an exercise of jurisdiction by a State that contravenes the limitations of §§ 402-403 is invalid.... International law normally is not concerned with how authority to exercise jurisdiction is allocated within a state's domestic constitutional order. Whether a State may exercise jurisdiction that the United States is entitled to exercise under international law is, therefore, generally a question

[11] We also note that the federal form of government of the United States distinguishes our governmental structure from other countries where only the national government has the authority to prosecute crimes.

> only of United States law. Subject to constitutional limitations, a State may exercise jurisdiction on the basis of territoriality, including effects within the territory, and, in some respects at least, on the basis of citizenship, residence, or domicile in the State.

Id. at § 402 cmt. k (emphasis supplied). Stepansky does not dispute that the federal government could prosecute him for this crime. See 18 U.S.C. § 7(8) (1994); Roberts, 1 F.Supp.2d at 607-08; United States v. Pizdrint, 983 F.Supp. 1110, 1112-13 (M.D.Fla.1997). Thus, because the United States can exercise jurisdiction in this case, so may the State of Florida as long as the State's actions do not conflict with federal law. See Restatement, supra, § 402 cmt. k.

Although Stepansky hypothesizes that the treaty clause would prevent the State from prosecuting a foreign national under Florida's special maritime criminal jurisdiction statute, that scenario is not presented in this case. The general rule is that absent a First Amendment challenge, "a person to whom a statute may be constitutionally applied cannot challenge the statute on the ground that it may be unconstitutionally applied to others." Massachusetts v. Oakes, 491 U.S. 576, 581, 109 S.Ct. 2633, 105 L.Ed.2d 493 (1989); see City of Daytona Beach v. Del Percio, 476 So.2d 197, 202 (Fla.1985). "This general rule reflects two 'cardinal principles' of our constitutional order: the personal nature of constitutional rights and the prudential limitations on constitutional adjudication." Los Angeles Police Dep't v. United Reporting Pub'g Corp., --- U.S. ----, ----, 120 S.Ct. 483, 489, 145 L.Ed.2d 451 (1999). Therefore, because the exercise of jurisdiction is proper as to Stepansky, who is a United States citizen, the Fifth District's holding that the statute was facially invalid as a violation of article I, section 10, see

Stepansky, 707 So.2d at 879, was erroneous.

3. Power of Federal Courts to Hear Admiralty Cases

Lastly, the federal constitution's grant of power to federal courts to hear "all Cases of admiralty and maritime Jurisdiction," U.S. Const., art. III, § 2, cl. 1, also does not preclude a state's exercise of concurrent jurisdiction with the federal government within the state's territorial waters. See Askew v. American Waterways Operators, Inc., 411 U.S. 325, 341, 93 S.Ct. 1590, 36 L.Ed.2d 280 (1973); see also Hoopengarner v. United States, 270 F.2d 465, 471 (6th Cir.1959) (finding that the federal government may exercise concurrent jurisdiction with states over crimes committed within the states' territorial waters). "It is black letter law ... that the mere grant of jurisdiction to a federal court does not operate to oust a state court from concurrent jurisdiction over the cause of action." Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473, 479, 101 S.Ct. 2870, 69 L.Ed.2d 784 (1981).

Certainly, as Stepansky concedes, the federal government would be able to exercise jurisdiction over this criminal matter pursuant to 18 U.S.C. § 7(8), which extends federal maritime jurisdiction to offenses committed by or against United States nationals on board foreign vessels scheduled to depart from or arrive in the United States. See Roberts, 1 F.Supp.2d at 607-08; Pizdrint, 983 F.Supp. at 1112-13; see also 18 U.S.C.A. § 2111 (1984) (criminalizing robberies committed within the federal maritime jurisdiction); 18 U.S.C. § 2241 (1994) (criminalizing aggravated sexual abuse in the federal maritime jurisdiction). There is no indication, however, that this grant of federal

jurisdiction is exclusive.[12] In fact, the statute conferring jurisdiction on the federal courts over all federal crimes, such as robberies and assaults within the federal maritime jurisdiction, specifically provides that: "Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof." 18 U.S.C. § 3231 (1994).

The courts will infer congressional intent to preempt state legislation if "[t]he scheme of federal regulation [is] so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it," the federal legislation "touch[es] a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject," or the "object sought" by the federal legislation "may reveal the same purpose." Ray, 435 U.S. at 157 (quoting Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230, 67 S.Ct. 1146, 91 L.Ed. 1447 (1947)). Unlike the comprehensive federal regulations governing certification of oil tankers and standards of oil tanker operation at issue in Ray and Locke, --- U.S. ----, 120 S.Ct. 1135, --- L.Ed.2d ----, the statutes at issue in this case do not involve a scheme of comprehensive federal regulations that are so pervasive as to give rise to a reasonable inference that Congress intended to preempt most state legislation.

The United States Supreme Court has explained, "Even

[12] The fact that there is no indication that federal maritime jurisdiction is exclusive is particularly significant when contrasted with other federal statutes that specifically grant exclusive jurisdiction in the federal courts. See, e.g., 18 U.S.C. § 3231 (1994) (granting exclusive original jurisdiction in federal district courts of all offenses against the laws of the United States); 28 U.S.C. § 1338 (1994) (granting federal courts exclusive original jurisdiction over patents).

though Congress has acted in the admiralty area, state regulation is permissible, absent a clear conflict with the federal law." Askew, 411 U.S. at 341; see Ray, 435 U.S. at 157. Thus, "the general rule on preemption in admiralty is that states may supplement federal admiralty law as applied to matters of local concern, so long as state law does not actually conflict with federal law or interfere with the uniform working of the maritime legal system." Pacific Merchant Shipping Ass'n v. Aubry, 918 F.2d 1409, 1422 (9th Cir.1990); see also Thomas J. Schoenbaum, Admiralty and Maritime Law § 2-5 (2d ed. 1994 & Supp.1999). In fact, in Locke, the Supreme Court found that the federal Ports and Waterways Safety Act of 1972 and the Oil Pollution Act of 1990 did not displace state laws which, "rather than imposing substantive regulation of a vessel's primary conduct, establish liability rules and financial requirements relating to oil spills." --- U.S. at ----, 120 S.Ct. at 1146.

This Court has previously rejected the argument that the federal courts have exclusive jurisdiction over crimes committed on the high seas precluding the State from exercising its criminal jurisdiction. See Keen v. State, 504 So.2d 396, 398-99 (Fla.1987), disapproved on other grounds, Owen v. State, 596 So.2d 985 (Fla.1992). The defendant in Keen committed murder while on the high seas. We found that because the element of premeditation occurred in Florida, jurisdiction was properly exercised under section 910.005(2), Florida Statutes (1977), which grants Florida jurisdiction over crimes committed partly within the state. 504 So.2d at 398-99. Although the State in Keen exercised a different basis for jurisdiction over the defendant, the critical holding of Keen is that the grant of criminal maritime jurisdiction to the federal courts in 18 U.S.C. § 7 is concurrent rather than exclusive in cases where the offense violates the laws of both sovereigns.

Keen, 504 So.2d at 399.

4. Conclusion: No Conflict With Federal Law

We conclude that the structure of section 910.006 ensures that it will not violate the constitution, that it will not conflict with the exercise of jurisdiction by federal courts, and that it will not interfere with the uniform working of the maritime legal system. See Pacific Merchant Shipping Ass'n, 918 F.2d at 1422. Section 910.006 provides that the State is not authorized to prosecute a crime under this statute unless federal law "prohibit [s] substantially the same act or omission." § 910.006(4). Further, pursuant to section 910.006(4), "No person shall be tried under this section if that person has been tried in good faith for substantially the same act or omission." Similarly, section 910.006(5)(a)1. specifies: "This section is not intended to assert priority over or otherwise interfere with the exercise of criminal jurisdiction by the United States, the flag state, or the state in whose territory an act or omission occurs."

Accordingly, section 910.006 makes clear that the State will not exercise jurisdiction if the federal government, the foreign flag state, or the state in whose territory the act occurs prosecutes the defendant. Therefore, under Tenth Amendment federalism principles, the State's exercise of jurisdiction in this case is not preempted by federal law. See Skiriotes, 313 U.S. at 74-75; Pacific Merchant Shipping Ass'n, 918 F.2d at 1422.

B. The State's Sovereign Authority--the Effects Doctrine

Finding that the exercise of jurisdiction in this case does not conflict with the constitution or federal law, our inquiry turns to whether the State's exercise of jurisdiction is within the State's

traditional police powers. The State asserts that the "effects" doctrine provides a proper basis for the State to assert jurisdiction in this case although the criminal acts were committed outside the State's territorial waters.

As Justice Holmes, writing for the United States Supreme Court, recognized, "Acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a State in punishing the cause of the harm as if he had been present at the effect, if the State should succeed in getting him within its power." Strassheim v. Daily, 221 U.S. 280, 285, 31 S.Ct. 558, 55 L.Ed. 735 (1911); see also Hartford Fire Ins. Co. v. California, 509 U.S. 764, 113 S.Ct. 2891, 125 L.Ed.2d 612 (1993) (applying effects doctrine to allow states to bring a Sherman Act claim in federal court against foreign defendants). The Restatement of Foreign Relations provides that a state may exercise its jurisdiction over criminal acts committed outside its territorial boundaries of the State if the acts have significant effects within the state. See Restatement, supra, § 402.[13]

[13] The Restatement of Foreign Relations provides:

[A] state has jurisdiction to prescribe law with respect to:
(1) (a) conduct that, wholly or in substantial part, takes place within its territory;
(b) the status of persons, or interests in things, present within its territory;
(c) conduct outside its territory that has or is intended to have substantial effect within its territory;
(2) the activities, interests, status, or relations of its nationals outside as well as within its territory; and
(3) certain conduct outside its territory by persons not its nationals that is directed against the security of the state or against a limited class of other state interests.

(continued...)

Likewise, the Supreme Court of Alaska has relied upon the principles incorporated in the effects doctrine to exercise criminal jurisdiction in the waters outside the geographical boundaries of that state. See State v. Sieminski, 556 P.2d 929 (Alaska 1976); see also State v. Bundrant, 546 P.2d 530, 555-56 (Alaska 1976).

In fact, the Fifth District acknowledged the effects doctrine as a basis for asserting jurisdiction beyond the state's geographic boundaries. See Stepansky, 707 So.2d at 878. As properly explained by the Fifth District, "The state may ... exercise criminal jurisdiction over acts committed beyond this three mile limit, at least where such acts have an effect in this state and there is no conflict with federal law and no foreign nation has criminal jurisdiction over said acts." Id. at 877-78. Accordingly, we conclude that Florida's sovereign authority includes the ability to exercise criminal jurisdiction over acts committed outside the territorial limits of the State under the effects doctrine as long as the exercise of jurisdiction does not conflict with federal law and the exercise of jurisdiction is a reasonable

[13](...continued)
Restatement, supra, § 402 (emphasis supplied).

Accordingly, the Restatement recognizes that states may prosecute a person for an act committed outside the state on the basis that the act has a substantial effect within the state, similar to the ability to prosecute an act that occurred wholly or partially within the territory of the state. See id. § 402(1). This is in addition to the ability of states to prosecute on the basis that the defendant is a citizen, resident or domiciliary of the state. If the basis of jurisdiction is that the defendant is a state citizen or resident, the act must generally also have a significant effect within the State. See id. § 402 reporter's note 5.

application of the effects doctrine.[14]

The stated purpose of section 910.006 as set forth in the legislative findings and intent is as follows:

> (1) LEGISLATIVE FINDINGS AND INTENT.--
> (a) The State of Florida is a major center for international travel and trade by sea.
> (b) The state has an interest in ensuring the protection of persons traveling to or from Florida by sea.
> (c) The state has an interest in cooperating with the masters of ships and the governments of the United States and the other states in the maintenance of law and order on board ship.
> (d) The interests of the state do not in principle require a general assertion of primary jurisdiction over acts or omissions at sea that would duplicate or conflict with the execution of any law enforcement responsibility of any other

[14] Stepansky relies upon Mounier v. State, 178 So.2d 714 (Fla.1965), in support of his argument that the State of Florida has no power to prosecute a criminal act that occurred outside the State's territorial boundaries. However, we do not find that case to be controlling. In Mounier, the statute at issue criminalized spear-fishing in the waters of Monroe County, Florida. Id. at 714-15. The defendant allegedly committed the offense outside Monroe County, Florida and we found that the alleged crime was not committed within the reach of the criminal statute. See id. at 716. We specifically declined to reach the question of whether the statute also could have criminalized acts committed outside the State's territorial waters. See id.; see also State v. Hill, 372 So.2d 84, 85 (Fla.1979) (declining to reach question of whether statute could criminalize conduct occurring outside territorial jurisdiction of State where the defendant's actions clearly occurred within Florida waters). Thus, Mouiner is not instructive in answering the question of whether the State may exercise jurisdiction over acts committed outside the State's territorial waters.

jurisdiction.
(e) The State of Florida should establish special maritime criminal jurisdiction extending to acts or omissions on board ships outside of the state under the circumstances delimited in this section.

§ 910.006(1). Thus, the State asserts that if the federal government and the foreign government under whose flag the cruise ship sails fail to prosecute crimes on cruise ships, Florida's tourism industry will suffer a significant adverse effect.

Federal courts have recognized that a criminal act having a similar adverse effect on the United States will justify the exercise of federal jurisdiction over crimes on cruise ships that would otherwise go unprosecuted. See Roberts, 1 F.Supp.2d at 608; Pizdrint, 983 F.Supp. at 1113. In those cases, the federal courts found a significant effect on the United States because the cruise lines conducted substantial business in the United States, the cruises began and ended in the United States, and federal law enforcement agents were required to become involved in prosecution. See Roberts, 1 F.Supp.2d at 608; Pizdrint, 988 F.Supp. at 1113.

Similarly, in this case the Legislature has determined that the State of Florida is a "major center for international travel and trade by sea" and that the "state has an interest in ensuring the protection of persons traveling to or from Florida by sea." § 910.006(1)(a), (c). Florida's tourism industry could be significantly affected if crimes that occur on board cruise ships where a majority of the fare-paying passengers embark and disembark in Florida were to go unprosecuted. We emphasize that pursuant to this statute the State exercises limited jurisdiction by operating only where the crime has not been

prosecuted by any other government entity, including the federal government or the foreign country in which the ship is registered.

CONCLUSION

Because neither the United States, any other state, nor the flag state has attempted to prosecute these crimes, Florida may prosecute Stepansky for burglary and attempted sexual battery in accordance with Florida's narrowly drawn statutory scheme. In this case, if the State were precluded from prosecuting Stepansky, this crime could go unpunished. We find that the prosecution by the State of Florida under these narrow circumstances is a reasonable application of the effects doctrine.

In conclusion, individual states have been accorded wide latitude, by the United States Constitution, the Supreme Court and pertinent federal legislation, to assert concurrent jurisdiction over maritime criminal matters extending beyond the State's territorial limits. Just as the federal government has the authority to prosecute crimes under these circumstances without offending international law, basic principles of federalism allow the states to prosecute under the effects doctrine when there is no conflict with federal law and the exercise of jurisdiction is reasonable. Section 910.006(3)(d) is of limited scope and designed to take effect only when neither the flag state nor the United States government acts in a particular case. Accordingly, we find that section 910.006(3)(d) is constitutional as applied. We reverse the decision of the Fifth District Court of Appeal and remand for proceedings consistent with this opinion.

It is so ordered.

SHAW, ANSTEAD, LEWIS and QUINCE, JJ., concur.

WELLS, J., dissents with an opinion in which HARDING, C.J., concurs.

WELLS, J., dissenting.

I dissent. I believe that the majority misinterprets both case law and the Restatement (Third) of Foreign Relations (1986) in finding section 910.006(3)(d), Florida Statutes (1995), to be constitutional as applied in this case. I would find, as did the Fifth District below, that the Legislature lacked constitutional authority to enact section 910.006(3)(d) as it is presently written.

As the Fifth District held, no federal constitutional or statutory authority exists for the Florida Legislature to assert an extension of the territorial boundaries of Florida so as to empower Florida courts to convict nonresidents of Florida aboard foreign vessels for criminal acts under Florida law. Neither the principles of federalism nor the effects doctrine affords Florida the authority to assert jurisdiction over a nonresident of Florida for maritime criminal matters extending beyond the state's territorial limits.

As to the principles of federalism, the majority finds that the statute is constitutional as applied because it does not conflict with federal law and because the prosecution is within the state's police powers. I disagree with this reasoning and would find the statute to be facially unconstitutional as well as unconstitutional as applied.

The majority cites United States v. Arjona, 120 U.S. 479, 487, 7 S.Ct. 628, 30 L.Ed. 728 (1887), for the proposition that Article

I, Section 8, Clause 10 of the United States Constitution does not preclude a state from punishing a felony on the high seas that also violates the state's laws. However, the only reference to concurrent jurisdiction in Arjona is a statement in dicta that a state can exercise concurrent jurisdiction with the federal government in prosecuting the counterfeiting of foreign currency on United States soil. 120 U.S. at 487. Arjona concerns neither crimes allegedly committed on ships nor extraterritorial jurisdiction in international waters, which are the circumstances of the instant case. Thus, the Arjona reference to state jurisdiction does not support the constitutionality of the statute at issue here. The Court in Arjona did hold, relevant to this case, that

> [a] state is expressly prohibited [by the United States Constitution] from entering into any "treaty, alliance, or confederation." ' Article 1, § 10, cl. 1. Thus all official intercourse between a state and foreign nations is prevented, and exclusive authority for that purpose given to the United States.

120 U.S. at 483. This holding supports the proposition that, as the Fifth District stated below, the Florida Legislature has no authority to enact a statute for prosecution of a criminal act by a nonresident of Florida which is alleged to have occurred either within the territorial jurisdiction of Liberia or within the extraterritorial jurisdiction of the United States pursuant to 18 U.S.C., § 7(8) (1994).

The United States Constitution also provides in Article II, Section 2, that the federal judicial power extends "to all cases of admiralty and maritime jurisdiction." The majority asserts that this constitutional provision does not preclude a state's exercise

of jurisdiction within the state's territorial waters. However, this case does not concern concurrent jurisdiction within the territorial waters of Florida. Rather, it concerns a crime on the high seas, in international waters. In Keen v. State, 504 So.2d 396 (Fla.1987), we rested Florida courts' jurisdiction upon the following:

> Keen's first claim here is that Florida is without jurisdiction to try him for this murder. According to Keen's theory, because the murder was committed on the high seas outside Florida's territorial jurisdiction, the federal government has exclusive jurisdiction to try him for this crime by virtue of 18 U.S.C. § 7. We disagree. Our decision in Lane v. State, 388 So.2d 1022 (Fla.1980), controls. In Lane we were faced with the factual situation wherein the charged offense, first-degree murder, was commenced in Florida and concluded in Alabama. Recognizing that the fatal blow to the victim was probably struck in Alabama, we held that pursuant to section 910.005(2), Florida Statutes (1977), Florida had jurisdiction to try the defendant. Id. at 1026. We reasoned that when one of the essential elements of the offense occurs in Florida, Florida courts have the power to try the defendant; whether an essential element of the offense occurred within the state is a factual question to be determined by the jury under appropriate instructions. Id. at 1028. Sub judice, it is clear from the record that the essential element of premeditation occurred within Florida. The jury was properly instructed by the trial court that in order to return a verdict of guilty, they must find that an essential element of the crime occurred within the state.

504 So.2d at 398-99 (emphasis added). Section 910.006(3)(d), the statutory subsection under scrutiny in this case, does not

require that one of the essential elements of a crime being prosecuted occur within the territorial boundaries of Florida. Thus, Keen does not support the assertion of state jurisdiction in this case.

Moreover, no concurrent state jurisdiction as to nonresidents of Florida is created by 18 U.S.C., § 7(8), which Congress enacted in 1994 to extend federal maritime jurisdiction for crimes committed by or against a national of the United States while aboard a foreign vessel on the high seas if that vessel, pursuant to schedule, departed from or arrived in the United States, as to nonresidents of Florida.

The majority further states that Florida has jurisdiction under an effects exception to the flag-state rule[15] because the alleged crime potentially causes harm to Florida's tourist industry. In support of its effects argument, the majority cites Hartford Fire Insurance Co. v. California, 509 U.S. 764, 113 S.Ct. 2891, 125 L.Ed.2d 612 (1993), and Strassheim v. Daily, 221 U.S. 280, 285, 31 S.Ct. 558, 55 L.Ed. 735 (1911). In Hartford, the Court held that states and private parties could assert jurisdiction over foreign defendants under the federal Sherman Anti-Trust Act even if the laws in the foreign state encouraged the conduct prohibited by the Act. 509 U.S. at 798. In explaining the jurisdictional basis for the case, the Court stated, "it is well established by now that the Sherman Act applies to foreign conduct that was meant to produce and did in fact produce some substantial effect on the United States." Id. at 796. The Court in Hartford did not address jurisdiction in the context of effects upon a state of the United States of alleged criminal activity on

[15] Geneva Convention on the High Seas, art. 6, § 1, April 15, 1958, 13 U.S.T. 2312, T.I.A.S. No. 520).

a foreign ship in international waters by a United States citizen who is not a Florida resident. In Strassheim, the Court held that a state may extradite a person accused of a crime from another state if the alleged crime was begun by an overt act in the state that is attempting to extradite. Strassheim does not support an argument that Florida's prosecution of a crime that indisputably began and ended in international waters is authorized because of alleged effects on the State of Florida.

The alleged act that led to criminal charges against Stepansky occurred 100 nautical miles from Florida. Thus, prosecution of this case properly lies with the United States federal government under the United States Constitution and federal statutes and treaties or with the Liberian government under the flag- state rule.

The majority points to the Restatement (Third) of Foreign Relations § 402 cmt. k (1986), which provides that the issue of whether a State can exercise concurrent jurisdiction with the United States is a question of federal rather than international law. We note here that the same section of Restatement (Third) of Foreign Relations cited by the dissent provides as follows relevant to a State of the United States:

> A State may not apply its laws to a person outside its territory merely on the basis that he is a national of the United States, but it may apply at least some laws to a person outside its territory on the basis that he is a citizen, resident, or domiciliary of the State. Cases that have upheld such exercises of jurisdiction, however, have generally involved acts or omissions that also had effect within the State. See also Skiriotes v. Florida, 313 U.S. 69, 61 S.Ct. 924, 85 L.Ed. 1193 (1941).

Restatement (Third) of Foreign Relations § 402 reporter's note 5 (1986) (emphasis added) (citations omitted). In Skiriotes, which the majority relies upon in support of its argument, the Court stated that a key factor in its holding was that Florida's criminal jurisdiction was based upon the prosecution for an alleged crime committed by a Florida resident:

> Even if it were assumed that the locus of the offense was outside the territorial waters of Florida, it would not follow that the State could not prohibit its own citizens from the use of the described divers' equipment at that place. No question as to the authority of the United States over these waters, or over the sponge fishery, is here involved. No right of a citizen of any other State is here asserted. The question is solely between appellant and his own State. The present case thus differs from that of Manchester v. Massachusetts, supra, for there the regulation by Massachusetts of the menhaden fisheries in Buzzards Bay was sought to be enforced as against the citizens of Rhode Island and it was in that relation that the question whether Buzzards Bay could be included within the territorial limits of Massachusetts was presented and was decided favor of that Commonwealth. The question as to the extent of the authority of a State over its own citizens on the high seas was not involved.

313 U.S. at 76-77 (emphasis added) (citation omitted). Section 910.006(3)(d) does not purport to regulate only the conduct of residents of Florida. Moreover, the statute is applied in this case to prosecute a nonresident of Florida whose alleged crime was committed against a nonresident of Florida.

As the majority notes, the federal special maritime jurisdiction

asserted in 18 U.S.C. § 7(8) extends federal criminal jurisdiction to offenses committed by or against United States nationals. However, even if concurrent jurisdiction did exist for Florida under the effects doctrine and the Restatement (Third) of Foreign Relations, we note that the breadth of section 910.006(3)(d), Florida Statutes, purports to extend jurisdiction over "acts or omissions" without stating whether such acts or omissions must be committed by a Florida resident. Thus, the Florida statute asserts jurisdiction over all United States nationals, contrary to the provision of Restatement (Third) of Foreign Relations noted above, as well as potentially over foreign nationals. I conclude that the reach of the statutory subsection is overbroad and extends beyond any potential concurrent federal jurisdiction, and thus is invalid, as the Fifth District below stated, unless otherwise authorized under a federal statute, the United States Constitution, or international law.

HARDING, C.J., concurs.

Matthew STEPANSKY, Petitioner,
v.
STATE of Florida, Respondent.

No. 97-1761.

District Court of Appeal of Florida,
Fifth District.

March 4, 1998.

Rehearing Denied March 27, 1998.

Robin C. Lemonidis and Bob R. Cherry of O'Brien, Riemenschneider, Kancilia & Lemonidis, P.A., Melbourne, for Petitioner.

Robert A. Butterworth, Attorney General, Tallahassee and Richard L. Polin, Assistant Attorney General, Miami, for Respondent.

COBB, Judge.

The issue in this case concerns the authority of the State of Florida to exercise criminal jurisdiction over an act occurring on the high seas on a foreign flag vessel.

The general criminal jurisdiction of the State of Florida is set out in section 910.005, Florida Statutes. In general, it provides that the State of Florida has jurisdiction over criminal acts committed wholly or partly within its geographical boundaries.

The state has jurisdiction over criminal acts committed on the seas within three miles of the state's shoreline.[1] The state may also exercise criminal jurisdiction over acts committed beyond this three mile limit, at least where such acts have an effect in this state and there is no conflict with federal law and no foreign nation has criminal jurisdiction over said acts. See, e.g., People v. Weeren, 26 Cal.3d 654, 163 Cal.Rptr. 255, 607 P.2d 1279 (1980); People v. Corsino, 91 Misc.2d 46, 397 N.Y.S.2d 342 (N.Y.CityCrim.Ct.1977); Corbin v. State, 672 P.2d 156 (Ct.App.Alaska 1983).

In 1989, the legislature enacted section 910.006 entitled "State special maritime criminal jurisdiction" which in relevant part purports to extend to the State of Florida special maritime criminal jurisdiction:

> (3) to acts or omissions on board a ship outside of the state under any of the following circumstances:
>
> * * * * * *
>
> (d) The act or omission occurs during a voyage on which over half of the revenue passengers on board the ship originally embarked and plan to finally disembark in this state, without regard to intermediate stopovers.

Stepansky is being prosecuted in Brevard County Circuit Court pursuant to subsection 910.006(3)(d) for burglary and attempted sexual battery allegedly occurring while he was a passenger on the M/V Atlantic, a Liberian registered cruise ship, 100 miles off the coast of Florida, in international waters.

[1] The seaward boundary of the State of Florida is defined as three miles from its coast. See Art. II, § 1(a), Fla. Const. (1968).

Stepansky and the complaining witness are United States citizens but neither is a resident of the State of Florida. The ship embarked and disembarked from Port Canaveral in Brevard County.

Stepansky moved to dismiss on the basis that the state lacks jurisdiction. The motion was denied, and he now seeks a writ of prohibition from this court asserting that the State of Florida has no constitutional authority to exercise jurisdiction over him for acts allegedly committed 100 miles off the coast of the State of Florida while aboard a foreign flag vessel.

Stepansky argues the "Flag State Rule," that the country whose flag a ship flies has exclusive jurisdiction over the ship and all aboard. He quotes from the Geneva Convention on the High Seas of 1958: Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or these articles, shall be subject to its exclusive jurisdiction on the high seas.[2] Stepansky asserts that, as a matter of international law, Liberia, as the Flag State of the Atlantic, has jurisdiction of this matter and Florida has no legal basis to claim jurisdiction. He argues that if a United States court has any authority to act at all in this case (instead of Liberia), the federal government must hold exclusive jurisdiction pursuant to federal maritime criminal statutes.

In 1994, due to continuing concern in regard to unpunished acts of maritime terrorism, the United States Congress enacted 18 U.S.C.A. § 7(8), which purported to extend the country's maritime jurisdiction to crimes committed by or against a

[2] See Convention on the High Seas, Art. 6, § 1, 29 April 1958, 13 U.S.T. 2312, T.I.A.S. No. 520.

national of the United States while aboard a foreign vessel on the high seas if that vessel, pursuant to schedule, departed from, or arrived in, the United States. The definition of the special maritime and territorial jurisdiction of the United States is now embodied in 18 U.S.C.A. § 7 as follows:

> 7. Special maritime and territorial jurisdiction of the United States defined
>
> The term "special maritime and territorial jurisdiction of the United States", as used in this title, includes:
> (1) The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.
>
> * * * * * *
>
> (7) Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States.
> (8) To the extent permitted by international law, any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States.

Stepansky does not challenge the authority of the United States to thus expand its jurisdiction of maritime criminal acts on the high seas, but he argues that none of the federal statutes

and amendments purport to give the State of Florida any authority in this area. The state's authority over criminal acts committed at sea, says Stepansky, is still confined to three miles from its coast. See Mounier v. State, 178 So.2d 714 (Fla.1965)(overturning convictions for spear fishing occurring beyond three mile limit).

The state responds that there is no express language in federal legislation, before or after the 1994 enactment, that expressly preempts the field of maritime legislation so as to preclude state legislation. This assertion misses the point. The true question is: what is the authority of the State of Florida to enact a statute purporting to exercise criminal jurisdiction over an act occurring on the high seas on a foreign flag vessel?

As we read the 1994 federal legislation, it pertains only to federal criminal jurisdiction, not to state criminal jurisdiction.[3] Whatever may be the validity vel non of the federal legislation in light of present day international law, an issue not before us, we do not see that legislation as authorizing the extension of the territorial boundaries of Florida. It seems clear that section 910.006(3)(d), as applied in this case, is violative of international law and the treaty obligations of the United States. Although there is authority for the United States to assert extraterritorial jurisdiction over its nationals, there simply is no basis for such an extension by a political subdivision of the United States in regard to the territory of a foreign country--and the flagship of another country is just that. The State of Florida is constitutionally prohibited from entering into a treaty with

[3] Based on extant federal case law, Stepansky apparently can be prosecuted in the appropriate United States District Court. See United States v. Pizdrint, 983 F.Supp. 1110 (M.D.Fla. 1997).

Liberia in respect to jurisdiction of crimes on the high seas. See Article I, section 10 of the United States Constitution.[4]

Accordingly, we find that section 910.006(3)(d), Florida Statutes, was enacted by the Florida Legislature without the constitutional authority to do so, thereby intruding upon the exclusive province of Congress and the President as delineated by Article I, section 10 of the United States Constitution. Cf. Zschernig v. Miller, 389 U.S. 429, 88 S.Ct. 664, 19 L.Ed.2d 683 (1968). There is no showing, and no argument presented to us, that any treaty ceding such power to Florida has been executed between Liberia and the United States.

THE WRIT OF PROHIBITION IS ISSUED.

ANTOON, J., concurs.

HARRIS, J., concurs and concurs specially, with opinion.

HARRIS, Judge, concurring and concurring specially.

It is a general principle of international law that vessels on the high seas, with very few exceptions, are subject to no authority except that of the State whose flag they fly. In 1994, the United

[4] Article I, section 10 provides in pertinent part:

> SECTION 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

States Congress, in an effort to extend American jurisdiction, amended 18 U.S.C. § 7 by asserting limited criminal jurisdiction for crimes committed aboard foreign vessels on the high seas:

> (8) To the extent permitted by international law, any foreign vessel during a voyage having a scheduled departure or arrival in the United States with respect to an offense committed by or against a national of the United States.

It has not yet been determined, and the issue is certainly not here before us, whether under international law, the United States can properly subject citizens of another nation to the jurisdiction of our courts for crimes committed by them against our nationals on a foreign vessel on the high seas even if such foreign vessel has availed itself of our ports. It seems clear, however, that international law does not prohibit a State from trying its own nationals for crimes committed abroad regardless of the nationality of the victim, at least if such crimes have an effect in such national's State. Therefore, it is submitted that the United States has the authority to prosecute its own citizens who commit a crime on board a foreign vessel on the high seas if it chooses to do so. Thus, the United States could try Stepansky under federal law.

The issue before us is whether Florida can do so. I agree with Judge Cobb that it cannot. Florida asserts jurisdiction under section 910.006(3), Florida Statutes:

> (3) SPECIAL MARITIME CRIMINAL JURISDICTION.--The special maritime criminal jurisdiction of the state extends to acts or omissions on board a ship outside of the state under any of the following circumstances:

* * * * * *

(d) The act or omission occurs during a voyage on which over half of the revenue passengers on board the ship originally embarked and finally plan to disembark in this state, without regard to intermediate stopovers.

This statute, as written, would permit Florida to prosecute a national of the State whose flag is being flown, Liberia in this case (perhaps a crew member), for committing a crime on the high seas against another national of such State (perhaps another crew member), even if neither of such nationals ever set foot on Florida soil so long as the ship on which they were employed or sailing stopped at a Florida port and picked up over half of its revenue passengers and intended to return them here. Even the United States does not claim such broad criminal jurisdiction over non-citizens sailing on the high seas on ships flying the flag of another nation even if American ports have been visited. In my view, by attempting to assert jurisdiction over all persons aboard a foreign vessel for acts committed on the high seas, the Florida statute violates a treaty[1] entered into by the United States which recognizes that exclusive jurisdiction over a ship on the high seas lies in the nation whose flag is carried by such ship. Although there are exceptions to this exclusive jurisdiction recognized by the treaty (for example--piracy, slave trade and hot pursuit), even if Florida, a non-signatory of the treaty, could avail itself of treaty exceptions, the use of an American port and the percentage of persons who embark or disembark at such port are not among those exceptions.

The State invites us to amend section 910.006(3)(d) by

[1] Geneva Convention on the High Seas, April 29, 1958, Art. 6, § 1, 13 U.S.T. 2312.

restricting its application to only non-Florida, United States' nationals (Florida residents and citizens are covered by section 910.006(3)(a) and that section is not involved herein). Even if we did so, still the state would face the hurdle discussed in the majority opinion.

FLORIDA STATUTES
TITLE XLVII. CRIMINAL PROCEDURE AND CORRECTIONS
CHAPTER 910. JURISDICTION AND VENUE

910.006. State special maritime criminal jurisdiction

(1) Legislative findings and intent.–

(a) The State of Florida is a major center for international travel and trade by sea.

(b) The state has an interest in ensuring the protection of persons traveling to or from Florida by sea.

(c) The state has an interest in cooperating with the masters of ships and the governments of the United States and the other states in the maintenance of law and order on board ship.

(d) The interests of the state do not in principle require a general assertion of primary jurisdiction over acts or omissions at sea that would duplicate or conflict with the execution of any law enforcement responsibility of any other jurisdiction.

(e) The State of Florida should establish special maritime criminal jurisdiction extending to acts or omissions on board ships outside of the state under the circumstances delimited in this section.

(2) Definitions.--As used in this section:

(a) "Flag state" means the state under whose laws a ship is registered.

(b) "Ship" means any watercraft or other contrivance used, capable of being used, or intended to be used as a means of transportation on water, and all phases of construction of such watercraft or contrivance.

(c) "State" means any foreign state, the United States or any state, territory, possession, or commonwealth thereof, or the District of Columbia.

(3) Special maritime criminal jurisdiction.--The special maritime criminal jurisdiction of the state extends to acts or omissions on board a ship outside of the state under any of the following circumstances:

(a) There is a suspect on board the ship who is a citizen or resident of this state or a state which consents to the jurisdiction of this state.

(b) The master of the ship or an official of the flag state commits a suspect on board the ship to the custody of a law enforcement officer acting under the authority of this state.

(c) The state in whose territory the act or omission occurred requests the exercise of jurisdiction by this state.

(d) The act or omission occurs during a voyage on which over half of the revenue passengers on board the ship originally embarked and plan to finally disembark in this state, without

regard to intermediate stopovers.

(e) The victim is a Florida law enforcement officer on board the ship in connection with his or her official duties.

(f) The act or omission is one of violence, detention, or depredation generally recognized as criminal, and the victim is a resident of this state.

(g) The act or omission causes or constitutes an attempt or conspiracy to cause a substantial effect in this state that is an element of the offense charged.

(h) The act or omission is one with respect to which all states may exercise criminal jurisdiction under international law or treaty.

(4) Criminal penalty application.--An act or omission against the person or property of another that is punishable by law when committed within this state shall be punishable in the same manner when committed within the special maritime criminal jurisdiction of this state, provided that the criminal laws of the United States prohibit substantially the same act or omission on board ships of the United States registry outside of the territory of the United States. Except for the circumstances that are within the criteria of paragraph (3)(g) or paragraph (3)(h), it shall be an affirmative defense that the act or omission was authorized by the master of the ship or an officer of the flag state in accordance with the laws of the flag state and international law. No person shall be tried under this section if that person has been tried in good faith by another state for substantially the same act or omission.

(5) Enforcement limitations.–

(a) The Attorney General shall take all measures necessary to ensure that law enforcement officers and prosecutors acting under the authority of this state respect the following criteria in applying the provisions of this section:

1. This section is not intended to assert priority over or otherwise interfere with the exercise of criminal jurisdiction by the United States, the flag state, or the state in whose territory an act or omission occurs.

2. This section shall be administered in a manner consistent with international law, with the primary responsibility of the flag state for the maintenance of order on board ship, and with the responsibilities of the Federal Government under the Constitution, treaties, and laws of the United States.

3. This section shall be applied with the cooperation of the flag state and the master of the ship where feasible.

(b) Nothing in this section shall be deemed to:

1. Authorize the boarding, search, or detention of a ship or of persons or property on board a ship without the consent of the flag state or the master of the ship if the ship is located outside of this state or if the necessary law enforcement activities are otherwise beyond the jurisdiction of this state or the United States.

2. Restrict the application or enforcement of other laws of this state or the duty of law enforcement officers to protect human life, property, or the marine environment from imminent harm.

3. Constitute an assertion of jurisdiction over acts or omissions of military or law enforcement officers authorized by a state in accordance with international laws.

4. Prohibit the operation of gambling, games of chance, or other gambling activities otherwise allowable outside the territorial waters of the State of Florida.

UNITED STATES CODE
TITLE 18. CRIMES AND CRIMINAL PROCEDURE
PART I--CRIMES
CHAPTER 1--GENERAL PROVISIONS

§ 7. Special maritime and territorial jurisdiction of the United States defined

The term "special maritime and territorial jurisdiction of the United States", as used in this title, includes:

(1) The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

(2) Any vessel registered, licensed, or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the Great Lakes, or any of the waters connecting them, or upon the Saint Lawrence River where the same constitutes the International Boundary Line.

(3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction

thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

(4) Any island, rock, or key containing deposits of guano, which may, at the discretion of the President, be considered as appertaining to the United States.

(5) Any aircraft belonging in whole or in part to the United States, or any citizen thereof, or to any corporation created by or under the laws of the United States, or any State, Territory, District, or possession thereof, while such aircraft is in flight over the high seas, or over any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

(6) Any vehicle used or designed for flight or navigation in space and on the registry of the United States pursuant to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies and the Convention on Registration of Objects Launched into Outer Space, while that vehicle is in flight, which is from the moment when all external doors are closed on Earth following embarkation until the moment when one such door is opened on Earth for disembarkation or in the case of a forced landing, until the competent authorities take over the responsibility for the vehicle and for persons and property aboard.

(7) Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States.

(8) To the extent permitted by international law, any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States.

UNITED STATES CODE
TITLE 18. CRIMES AND CRIMINAL PROCEDURE
PART I–CRIMES
CHAPTER 1–GENERAL PROVISIONS

§ 13. Laws of States adopted for areas within Federal jurisdiction

(a) Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, or on, above, or below any portion of the territorial sea of the United States not within the jurisdiction of any State, Commonwealth, territory, possession, or district is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

(b)(1) Subject to paragraph (2) and for purposes of subsection (a) of this section, that which may or shall be imposed through judicial or administrative action under the law of a State, territory, possession, or district, for a conviction for operating a motor vehicle under the influence of a drug or alcohol, shall be considered to be a punishment provided by that law. Any limitation on the right or privilege to operate a motor vehicle imposed under this subsection shall apply only to the special maritime and territorial jurisdiction of the United States.

(2)(A) In addition to any term of imprisonment provided for operating a motor vehicle under the influence of a drug or alcohol imposed under the law of a State, territory, possession, or district, the punishment for such an offense under this section shall include an additional term of imprisonment of not more than 1 year, or if serious bodily injury of a minor is caused, not more than 5 years, or if death of a minor is caused, not more than 10 years, and an additional fine under this title, or both, if--

(i) a minor (other than the offender) was present in the motor vehicle when the offense was committed; and

(ii) the law of the State, territory, possession, or district in which the offense occurred does not provide an additional term of imprisonment under the circumstances described in clause (i).

(B) For the purposes of subparagraph (A), the term "minor" means a person less than 18 years of age.

(c) Whenever any waters of the territorial sea of the United States lie outside the territory of any State, Commonwealth, territory, possession, or district, such waters (including the airspace above and the seabed and subsoil below, and artificial islands and fixed structures erected thereon) shall be deemed, for purposes of subsection (a), to lie within the area of the State, Commonwealth, territory, possession, or district that it would lie within if the boundaries of such State, Commonwealth, territory, possession, or district were extended seaward to the outer limit of the territorial sea of the United States.

UNITED STATES CODE
TITLE 18. CRIMES AND CRIMINAL PROCEDURE
PART II--CRIMINAL PROCEDURE
CHAPTER 211--JURISDICTION AND VENUE

§ 3231. District courts

The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

UNITED STATES CODE
TITLE 18. CRIMES AND CRIMINAL PROCEDURE
PART II–CRIMINAL PROCEDURE
CHAPTER 211–JURISDICTION AND VENUE

§ 3238. Offenses not committed in any district

The trial of all offenses begun or committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district in which the offender, or any one of two or more joint offenders, is arrested or is first brought; but if such offender or offenders are not so arrested or brought into any district, an indictment or information may be filed in the district of the last known residence of the offender or of any one of two or more joint offenders, or if no such residence is known the indictment or information may be filed in the District of Columbia.